



DEPARTMENT OF HOMELAND SECURITY

9110-04-P

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0628]

RIN 1625-AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), Newport River, Morehead City, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the operating schedule that governs the Carolina Coastal Railroad Bridge, at AIWW mile 203.8, across Newport River in Morehead City, NC. This bridge is presently maintained in the open position except when closure is necessary for train crossings. This change would allow the bridge to remain closed at night so that necessary repairs may be made while still providing for the reasonable needs of navigation.

DATES: This temporary final rule is effective from 5 a.m. on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] to 8:30 p.m. on October 1, 2013.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-0628 and

are available online by going to www.regulations.gov, and inserting USCG-2012-0628 in the "Keyword" box, and then clicking "Search". This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Terrance A. Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at telephone (757) 398-6587, email terrance.a.knowles@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
U.S.C	United States Code

A. Regulatory History and Information

On August 10, 2012, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operations; Atlantic

Intracoastal Waterway (AIWW), Newport River, Morehead City, NC." in the Federal Register (77 FR 47787). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the Federal Register. Due to these bridge repairs being required and also being a lengthy process, it is best that this work be done when there is the least marine activity, such as during the winter and night time. Starting the project now will possibly shorten the 2013 summertime impacts to navigation, depending on expected project tempo/efficiency. Also, replacement of the obsolete drive system will allow for a safer/faster way to close the bridge during approaching hurricanes for the 2013 storm season and beyond.

B. Basis and Purpose

The North Carolina Department of Transportation (NCDOT), who owns and operates this bascule-type railroad bridge, has requested a temporary change to the existing operating regulations to facilitate repairs of existing structural steel, strengthening of the main bascule girders and upgrading the obsolete drive system. The current regulations, under the general requirements set out at 33 CFR 117.5, require that the

Carolina Coastal Railroad Bridge, at AIWW mile 203.8, across Newport River in Morehead City NC, shall open promptly and fully for the passage of vessels when a request to open is given. However, the drawbridge is currently maintained in the open to navigation position at all times and closes for passing trains.

In the closed position to vessels, this single-leaf bascule drawbridge has a vertical clearance of 4 feet above mean high water.

To facilitate the required repair work and to minimize the impact on navigation, the drawbridge would operate as follows:

1) from 5 a.m. [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] to 8:30 p.m. on October 1, 2013 shall be maintained in the open position to vessels and would only be closed for the passage of trains and to perform periodic maintenance; and 2) in the closed position to vessels, from 8:30 p.m. to 5 a.m., with one optional opening provided at 12 a.m. (midnight) for vessels providing advance notice before 4 p.m. on the afternoon before the requested opening.

Vessel traffic along this part of the Atlantic Intracoastal Waterway consists of commercial and pleasure craft including sail boats, fishing boats, and tug and barge traffic, that transit mainly during the daylight hours with the occasional tug and barge traffic at night. The drawbridge is currently maintained in the open to navigation position at all times and

closes for passing trains. Consequently, the number of mariners transiting through this section of the waterway is not based on the amount of vessel openings but on the average number of waterway users, which showed that there are fewer vessel transits at night for mariners, making it a more suitable time to restrict the operation of the drawbridge.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a comment period of 30 days and no comments were received. The Coast Guard would temporarily revise the operating regulations at 33 CFR 117.821 by adding a new paragraph(c). Paragraph(c) would state from 5 a.m. on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] to 8:30 p.m. on October 1, 2013, the draw of the Carolina Coastal Railroad Bridge shall be maintained in the open position to vessels, and would only be closed for the passage of trains and to perform periodic maintenance; and the draw need not open from 8:30 p.m. to 5 a.m., except at 12 a.m. (midnight) for vessels providing advance notice before 4 p.m. on the afternoon before the requested opening.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The temporary changes are expected to have minimal impact on mariners due to the low number of vessels transiting this area at night. Also, a midnight vessel opening would be available each night for vessels requiring an opening provided that advance notice is given by 4 p.m. on the afternoon before the requested opening.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business

Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will not have a significant economic impact on a substantial number of small entities because the rule adds navigational restrictions mainly to the movement of vessels during a time when there is less traffic. Most commercial traffic will leave and return during the day. The rule would possibly affect small entities such as owners/operators of vessels due to limited drawbridge openings from 8:30 p.m. to 5 a.m. To minimize delays, these vessels can plan their transits in accordance with the proposed opening schedule.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agricultural Regulatory Enforcement Ombudsman and the Regional Small Business

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without

jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and

Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, and Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of

Homeland Security Delegation No. 0170.1.

2. In §117.821, add paragraph (c) to read as follows:
§117.821 Atlantic Intracoastal Waterway, Albemarle Sound to
Sunset Beach.

* * * * *

(c) From 5 a.m. on [INSERT DATE OF PUBLICATION IN THE
FEDERAL REGISTER] to 8:30 p.m. on October 1, 2013, the draw of
the Carolina Coastal Railroad Bridge, at mile 203.8, (Newport
River) at Morehead City, shall operate as follows:

(1) During the day from 5 a.m. to 8:30 p.m., shall be
maintained in the open position to vessels and would only be
closed for the passage of trains and to perform periodic
maintenance.

(2) At night, need not open 8:30 p.m. to 5 a.m. except an
opening would be provided at 12 a.m. (midnight) if advance
notice is given before 4 p.m. on the afternoon before the
requested opening.

Dated: October 5, 2012

Lincoln D. Stroh
Captain, U.S. Coast Guard
Acting Commander, Fifth Coast Guard District

[FR Doc. 2012-25540 Filed 10/16/2012 at 8:45 am;
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